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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1317

CARLO GAMBINO, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–10a) is reported at 419 F. 2d 1355. The opinions of the Board of Immigration Appeals (Pet. App. 12a–16a) and the special inquiry officer (Pet. App. 17a–31a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 7, 1970 (R. 67).[1] The petition for a writ

[1] "R." refers to the numbers on the tabs attached to the documents making up the administrative record and to the numbers (consecutive thereto) on the documents constituting the proceedings in the court of appeals.

of certiorari was filed on March 13, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner's brief excursion to Canada in 1935, under an administrative procedure which permitted aliens unlawfully present in the United States to go there to seek a visa for lawful entry, made him a lawful resident of the United States even though the visa was refused.

2. Whether petitioner, who entered the country as a stowaway, is a person who had procured or sought to procure "visas or other documentation, or entry into the United States by fraud or misrepresentation" and thus is excused from deportation, 8 U.S.C. 1251(f).

3. Whether petitioner's requests for discretionary relief from deportation were properly denied.

STATUTES INVOLVED

The pertinent provisions of Sections 212(a) and 241 (a) and (f) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a), 1251 (a) and (f), are set forth in the Appendix, *infra*, p. 20.

STATEMENT

On December 9, 1966, following proceedings before a special inquiry officer of the Immigration and Naturalization Service (R. 9–62), petitioner was ordered deported to Italy (Pet. App. 17a–31a). The Board of

Immigration Appeals affirmed (Pet. App. 12a–16a) and on petition for review the court of appeals affirmed (Pet. App. 1a–10a).

1. Petitioner is a 67-year-old alien, a native of Italy, who entered the United States at Norfolk, Virginia, on December 23, 1921, as a stowaway. He later married a United States citizen and had four citizen children. Except for a 1935 visit to Canada of less than a day's duration, he has not left this country since his arrival (Pet. App. 18a, 23a).

The 1935 trip was made pursuant to a procedure, followed until 1952,[2] by which aliens unlawfully present in this country were permitted to go to Canada to seek the visas which, if granted, would enable them to become lawful permanent residents. Under the procedure developed, the alien mailed his application for a visa to an American consulate in Canada and, if advised that his papers appeared to be in order, submitted to "preexamination" by American officials at the border to determine if he could be admitted if he had a visa. If he appeared admissible, he was permitted to cross the border into Canada to seek the visa. Because Canadian officials would not have allowed this entry if it appeared that the alien would not be readmitted to the United States, *Matter of A——*, 6 I & N Dec. 684, 690, aliens who appeared inadmissible were not permitted to cross the border, and those who appeared admissible were furnished a

[2] Since 1952, statutes have permitted aliens to adjust their residence status without the necessity of leaving the United States, so that a trip to Canada is no longer necessary. 8 U.S.C. 1255.

sealed letter guaranteeing readmission to the United States even if they failed to secure the visa. On return from Canada, persons who had obtained visas were admitted as lawful permanent residents and a notation to that effect was made on the record of any prior entry; those who had not obtained visas were admitted, but expressly warned that their residence status was unchanged (Pet. App. 20a–21a; Ex. 5, R. 36).

Petitioner applied for a visa from the United States Consul in Montreal, Canada. He was then pre-examined at Rouses Point, New York, and left the country from that point to seek his visa (Pet. App. 18a, 20a–21a). In Montreal, the visa was refused because of doubts as to his eligibility arising from petitioner's police record. Petitioner returned to the United States the same day, without a visa but under the assurance of readmission described above. The requested visa was never issued (Pet. App. 18a, 20a).

At the time, petitioner was protected from deportation by the statutory requirement that deportation proceedings based on excludability at the time of entry be commenced within five years of entry (Section 19, Immigration Act of 1917, 39 Stat. 889). That requirement was retroactively repealed in 1952 (8 U.S.C. 1251(d); Immigration and Nationality Act, Section 403(a)(13), 66 Stat. 279; *Lehmann* v. *Carson*, 353 U.S. 685), and in November of 1957 petitioner was ordered to show cause why he should not be deported as a stowaway, a class of aliens excludable at the time of his entry (8 U.S.C. 1251(a)(1); Section 3, Immigration Act of 1917, 39 Stat. 875, now 8 U.S.C. 1182(a)(18)).

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During the ensuing proceedings, the Service lodged as an additional charge of deportability the claim that petitioner had been inadmissible at the time of his 1935 reentry from Canada, as an immigrant not in possession of a visa and not exempt by law from that requirement (Section 13(a), Immigration Act of 1924, 43 Stat. 161, now (in relevant part) 8 U.S.C. 1182(a)(20)). At the hearing, petitioner's counsel conceded most of the facts outlined above. He claimed, however, that petitioner could not be deported as a stowaway because he had departed from the United States after the entry on which that charge was based. And he contended that petitioner was not deportable as an unvisaed immigrant because the 1935 entry admitted him to the United States for permanent residence, with the approval of the immigration authorities (Pet. App. 18a–19a).

The special inquiry officer noted that petitioner's deportability would be unquestionable had he remained in the United States continuously since his entry as a stowaway, and ruled that the 1935 departure and reentry did not disrupt that continuity (Pet. App. 19a–20a, 22a–23a). While it was necessary for him to pass only on the stowaway charge, the officer indicated that if he was wrong about the effect of the 1935 readmission on that charge, the alternative charge would nonetheless require deportation (Pet. App. 22a).

2. During the deportation proceedings petitioner applied for two forms of discretionary relief from deportation—registration as an alien lawfully admitted for permanent residence (8 U.S.C. 1259) and volun-

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tary departure (8 U.S.C. 1254(e)). But petitioner has a substantial criminal record, including a 1941 federal conviction for conspiring to violate the internal revenue laws.[3] Since this offense involved moral turpitude, see *Jordan* v. *De George*, 341 U.S. 223, petitioner had to secure the Attorney General's waiver of it (8 U.S.C. 1182(h)) to be eligible for registry. As to both forms of relief, he had to show that he was a person of good moral character (Pet. App. 23a). In view of these issues, the special inquiry officer submitted eleven written interrogatories[4] to petitioner requesting details about his arrest record since 1941, his business activities, his tax returns for the past ten years, his associates, and his known participation in 1957 in the famous "Apalachin" conference[5] (Pet. App.

[3] He was sentenced for the 1941 offense to one year's imprisonment (later reduced to eleven months and 29 days) and to pay a $1,000 fine; execution was suspended and he was placed on probation for five years. In 1942 he was convicted and sentenced to 30 days' imprisonment on another federal internal revenue violation. In 1930, following his arrest on a state larceny charge, he forfeited bond and failed to appear; rearrested on the charge four years later in another state, he secured the entry of a *nolle prosequi* after making restitution in the sum of $1,000 and paying the costs of extradition. In 1959 he was charged in a state court with making a false statement about his health in an application for a chauffeur's license; he surrendered the license. He has, in addition, been twice arrested on charges that were later dismissed, including a third accusation (in 1934) of violating the internal revenue laws (Pet. App. 23a–24a).

[4] The questions were submitted in written form in deference to a claim by petitioner's counsel, made after some questions had been answered orally, that petitioner was unable to attend any more hearings on account of his heart condition (Pet. App. 25a–26a).

[5] See *United States* v. *Bufalino*, 285 F. 2d 408, 413(C.A.2).

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25a–27a, 32a–36a). Except to state that he had not been arrested since 1941 and that he had filed tax returns for the mentioned years (of which he declined to supply copies), petitioner refused to answer (Pet. App. 26a, 32a–38a). He was advised that refusal to answer would warrant denial of the requested relief, and the deportation order followed (Pet. App. 27a–31a).

ARGUMENT

1. There is no merit in petitioner's claim that his one-day excursion to Canada in 1935 to seek a visa made him a lawful permanent resident even though the visa was denied (Pet. 6–11). Permission to leave and return to the country was entirely a matter of grace, and the lawfulness of petitioner's subsequent residence was wholly dependent on his success in getting a visa. On returning unsuccessful, petitioner was readmitted under the preexamination procedure only after he had been expressly advised that his reentry would *not* vest him with lawful resident status (*supra*, p. 4). To argue that the decision to readmit him after he failed to obtain a visa terminated his stowaway status and "wipe[d] the slate clean" (Pet. 7) is to mistake what preexamination was about. Readmission was simply a condition without which Canadian cooperation in the preexamination procedure would not have been granted. The returning unsuccessful applicant, in the words of the Board of Immigration Appeals, "resumed the status he had before he left" (Pet. App. 14a).

An analogy can be found in the present procedure

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corresponding to the preexamination process (8 U.S.C. 1255). To qualify for relief under this procedure, an alien must be eligible to receive an immigration visa, and one must be immediately available. In this respect the procedure is like preexamination. The difference is that under Section 1255, the alien need not leave the country to get his visa. But it would hardly be supposed that if an alien's application for Section 1255 relief were denied, his status thereafter would be in any way different from what it had been. No more can it be thought that the unsuccessful applicant for a visa under the preexamination practice acquired a new status following a trip taken solely because it was then a necessary part of getting a visa.

Moreover, even if it were assumed that petitioner's trip gave him a new status, that status would not foreclose deportation. As both the inquiry officer and the Board of Immigration Appeals noted, if petitioner was no longer in stowaway status upon reentry, he was deportable as an alien who entered without a visa, and without being exempted by law from the visa requirement (8 U.S.C. 1182(a)(20)). See *United States ex rel. Matranga* v. *Mackey*, 115 F. Supp. 45, 46–47 (S.D.N.Y.), affirmed, 210 F. 2d 160 (C.A. 2), certiorari denied, 347 U.S. 967.*

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*The so-called "Seventh Proviso of Section 3 of the 1917 Act" (39 Stat. 878, 8 U.S.C. (1934 ed.) 136(p), now 8 U.S.C. 1182(c)) does not aid petitioner. That proviso stated in 1935: "[A]liens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe." First,

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But petitioner's brief visit to Canada did not interrupt his residence here in a way that warrants viewing his readmission as a new entry. This Court held in *Rosenberg* v. *Fleuti*, 374 U.S. 449, that a two-hour visit to Mexico by an alien lawfully residing in this country had not so meaningfully interrupted that residence that his return could be treated as an entry within the meaning of the immigration laws. If a brief pleasure trip into Mexico did not disrupt an alien's lawful residence, petitioner's similarly short trip into Canada did not interrupt his unlawful residence. In both cases the alien's presence in this country during the period spanning his brief absence had been substantially continuous. That the ruling in *Fleuti* had consequences favorable to the alien, while its application here would cut the other way (see Pet. 10), is not a valid differentiating factor.

2. Petitioner's claim that Congress has excused from deportation all stowaway aliens with certain close familial ties to citizens or lawful residents (Pet. 11–

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proceedings under the proviso were wholly independent of preexamination proceedings (Pet. App. 15a), and there is no indication that the discretionary authority it grants was either exercised or invoked in this case. If it had been, there would be some written notation of petitioner's admittance *as a lawful permanent resident* following his abortive 1935 trip, yet none exists. On the contrary, visa applicants who failed to secure a visa in Canada under the preexamination procedure were told precisely the opposite when readmitted. Immigration authorities had no power in 1935—nor do they now—to admit for permanent residence an alien not in possession of an immigration visa and not exempt by law from that requirement.

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16) is also untenable.[1] The claim is based on 8 U.S.C. 1251(f), which provides:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

Petitioner's argument is that stowing away is a fraud of sorts and should therefore be deemed within the section's spirit (Pet. 14–15).

Nothing in the text or context of Section 1251(f) supports the suggested interpretation. Section 1251(a)(1) makes *any* alien who is excludable at entry deportable. The various bases for excludability are listed in 8 U.S.C. 1182(a); there are, in all, thirty-one numbered subsections to that section. One of these, Section 1182(a)(19), provides for the exclusion of "[a]ny alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact." *Immigration Service* v. *Errico*, 385 U.S. 214, 217. The language of

[1] This contention was first advanced in the court of appeals, see Pet. App. 5a, but was reached there in view of petitioner's circumstances.

Section 1251(f) is an evident allusion to this subsection. The exclusion of stowaways, on the other hand, is provided for in Section 1182(a)(18). It would be unusual, to say the least, to hold that the language of Section 1251(f), so clearly imitating one subsection, referred to another subsection which it did not at all resemble. Ordinarily, when Congress has meant to legislate about stowaways, as in Section 1182(a)(18), it has said "stowaways" (Pet. App. 9a).

Nor is the proposed construction supported by *Immigration Service* v. *Errico, supra*. The issue there was whether Section 1251(f) "saves from deportation an alien who *misrepresents his status* for the purpose of evading *quota restrictions*, if he has the necessary familial relationship to a United States citizen or lawful permanent resident" (385 U.S. at 215, emphasis added). Both aliens involved had sought and obtained immigration visas (385 U.S. at 215–216). Although they had misrepresented their status, they had in form submitted to and complied with the screening process by which this government seeks to exclude aliens whom Congress has declared inadmissible. No such compliance occurred here, and that is the critical difference.

> In order to obtain an immigrant visa pursuant to the standard requirements, applicable to all immigrants coming from abroad, a visa application is filed with the American consul; a medical examination is administered to assure that the health requirements are satisfied; police certificates are obtained to show any crim-

> inal record; birth records are examined; and a valid passport is required. Furthermore, the applicant is registered and fingerprinted, and must provide satisfactory sworn responses to questions as to residence, organizational memberships, prior arrests or confinement, use of narcotics, previous deportation or immigration violations, ability to read and subversive activities. [*Matter of Lee*, Interim Decision No. 1960, p. 9 (May 1, 1969).]

Matter of Lee concerned an alien who had entered under a false claim of citizenship, and thereby evaded all these requirements. The Attorney General concluded that nothing in the language of Section 1251(f), its legislative history, or this Court's opinion in *Errico* supported the view that Congress intended to permit "the complete circumvention of the immigration visa system established by the Act" (*ibid.*). This reasoning is all the more forceful in this case. The false claimant to citizenship at least presents himself at the portal and subjects himself to possible challenge. A stowaway enters surreptitiously. It requires, we submit, a more convincing showing than petitioner has made to justify the belief that Congress' references in Section 1251(f) to the procural of "visas or other documentation, or entry" through "fraud" and "misrepresentation" were inapt, and that it also meant to include among the section's beneficiaries aliens who had entered through stealth, with no documentation of any kind. Nothing in the legislative history or background of the section, reviewed in *Errico*,

gives ground for any such inference.[8] Cf. *de Vargas* v. *Immigration and Naturalization Service*, 409 F. 2d 335 (C.A. 5), certiorari denied, 396 U.S. 895; *Velasquez Espinosa* v. *Immigration and Naturalization Service*, 404 F. 2d 544, 546 (C.A. 9).

3. There is no substance to petitioner's contention that his requests for discretionary relief from deportation were improperly denied (Pet. 16-18). The granting of such relief "is a matter of discretion and of administrative grace" (*Hintopoulos* v. *Shaughnessy*, 353 U.S. 72, 77; *Kimm* v. *Rosenberg*, 363 U.S. 405, 408; *Jay* v. *Boyd*, 351 U.S. 345, 354), "analogous to the Board of Parole's powers to release federal prisoners on parole" (*Jay* v. *Boyd*, *supra*, 351 U.S. at 354) or to "a judge's power to suspend the execution

[8] There is an ambiguous statement in H. Rep. No. 1199, 85th Cong., 1st Sess., p. 11 (1957) to the effect that a predecessor of Section 1251(f) would give relief to Mexican nationals who, "during the time when border-control operations suffered from regrettable laxity," had illegally entered the United States and thereafter "establish[ed] a family in this country" (*Errico*, *supra*, 385 U.S. at 224). But this does not necessarily refer to surreptitious entrants, as petitioner suggests (Pet. 13). The reference could be to lax screening of persons who had passed through established points of entry; at all events, the committee would not appear to have had stowaways in mind. On the same page of the report the committee said that the purpose of the proposed legislation was to extend on a blanket basis the same relief which, through private bills, Congress had been granting to selected individuals for some years. We are unaware of any private bills for the relief of stowaways introduced during that period. In any case, the section's legislative history is extensive, and this isolated remark is hardly enough to overcome the conclusion that Congress did not intend to benefit aliens who entered through stealth.

of a sentence, or the President's to pardon a convict" (*United States ex rel. Kaloudis* v. *Shaughnessy*, 180 F. 2d 489, 491 (C.A.2)). The applicant "cannot limit the inquiry to the favorable aspects of the case and reserve the right to be silent on the unfavorable aspects"; he must make "full disclosure of all pertinent information." *Matter of Y—*, 7 I & N Dec. 697, 700; cf. *Kimm* v. *Rosenberg, supra.* Particularly in view of petitioner's criminal record and apparent associates, the inquiry into his past and present associations and business activities was pertinent to determining whether he had "mended his ways" (Pet. App. 30a) and whether he was eligible for, and merited, the favorable exercise of discretion he was requesting. Cf. *De Lucia* v. *Immigation and Naturalization Service*, 370 F. 2d 305, 308 (C.A. 7), certiorari denied, 386 U.S. 912.

We have been informed that petitioner was the subject of electronic surveillance during parts of the years 1962, 1963, and 1964, during the course of the deportation proceedings. However, the Immigration and Naturalization Service did not participate in the surveillance and in our view remand for further proceedings is not required. The relevant facts are as follows:

The deportation proceeding was commenced on November 25, 1957, and the initial hearing was held on November 3, 1958. The hearings were thereafter frequently continued, sometimes for extended periods, primarily because of petitioner's poor health. Peti-

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tioner's applications for discretionary relief from deportation were filed on February 26, 1963; he was directed to answer the written interrogatories on July 8, 1966; his counsel's objections to answering them were overruled on September 26, 1966; and he was ordered deported on December 9, 1966 (Pet. App. 17a, 24a–27a).

On February 26, 1963, in the course of the last session at which he testified, petitioner stated that he was employed as a representative of S.G.S., Labor Consultants, earning $25,000 to $30,000 per year (Pet. App. 23a; R. 12, p. 36). In addition, it was a matter of public knowledge that petitioner had attended the celebrated "Apalachin" conference of November 14, 1957, at the home of Joseph Barbara in Apalachin, New York. See *United States* v. *Bufalino,* 285 F. 2d 408, 413 (C.A. 2); Pet. App. 3a.

Of the eleven written interrogatories propounded to petitioner in connection with his requests for discretionary relief, five (Nos. 3–7) related to his relations with the S.G.S. Company and three (Nos. 8–10) to his visit to the Barbara home (Pet. App. 32a–33a). Questions Nos. 3–5 asked the names of all the partners and persons associated with S.G.S. since 1954, the nature of the company, and what petitioner's duties with it had been. Question No. 6 asked petitioner to indicate which of certain other companies and associations, the names of which were supplied, had been clients of S.G.S. and to give specified information with respect to each. Question No. 7, which was prefaced with the statement that information had been received that S.G.S. was no longer in existence, requested specified details concerning its dissolution.

Question No. 8 asked whether petitioner had been present at the Barbara home at the time of the Apalachin conference and Questions Nos. 9 and 10 requested various details concerning the visit and a list of the persons whom he had seen there.

Of the three remaining interrogatories, Question No. 11 asked if petitioner had filed income tax returns for the preceding ten years and requested, if so, that he furnish copies (he replied that he had filed such returns, but declined to supply copies); Question No. 2 asked that he state which of 42 named persons he knew and to give specified information as to each; and Question No. 1 inquired whether he had been arrested since his 1941 conviction (he answered this question, the only one he responded to fully, in the negative) (Pet. App. 32a, 34a–37a).

Except to the extent indicated, petitioner refused to answer the interrogatories for the stated reason (Pet. App. 38a) that they were

> wholly irrelevant and immaterial to the issue of deportability and the application for discretionary relief and seek information for purposes unrelated to the proceeding. Respondent [petitioner] seeks discretionary relief wholly upon the basis of his present precarious health due to heart disease and diabetes * * *. Alleged past activities and associations are irrelevant. Copies of Respondent's income tax returns are irrelevant.

The special inquiry officer overruled the objection and insisted that all of the questions be answered as a condition of his giving favorable consideration to

the requests for discretionary relief. The officer's reasons for this ruling, as stated in his opinion accompanying the deportation order, were that the questions (Pet. App. 30a–31a)

> are pertinent to all the relief which [petitioner] has requested. In view of his past criminal record, his present associations are material in determining whether he has mended his ways and effected a complete reformation. Likewise, in view of his criminal record and his physical disability which has been repeatedly stressed throughout these proceedings, the nature of his business activities which have yielded him the substantial sum of $25,000–$30,000 per year, is certainly a proper area of inquiry; and his income tax returns for the past ten years to explore his financial structure are relevant to that inquiry.
>
> * * * He cannot predicate such applications [for discretionary relief] on his illness alone and decline to furnish information relating to other factors which may heavily outweigh his physical condition in the ultimate exercise of discretion to grant or deny the requested relief. As one who seeks grace at the hands of the Government he must be prepared to make full and frank disclosure concerning all matters within his knowledge which may affect the exercise of that grace. * * * Nor can the respondent rely upon his heart condition and other physical disabilities to excuse his failure to furnish the information called for by the interrogatories. * * *

Since the facts underlying the determination of deportability—his entry as a stowaway and the circumstances of the 1935 Canadian trip—were conceded by petitioner at the hearings, there is no possible basis for suggesting that that determination was tainted by the surveillance involved. The only arguable basis for a claim of taint concerns the denial of the requests for discretionary relief. It is our submission that that ruling is also unaffected.

Since the granting of relief from deportation is wholly discretionary, we seriously doubt that a denial of relief based on an alien's refusal to answer questions reasonably related to exercise of that discretion would be wrongful, even if it were shown that the questions were necessarily predicated on improperly obtained information. As an applicant for discretionary relief, it was incumbent on petitioner to demonstrate his eligibility for such relief, 8 CFR 242.17(d), and his refusal to respond to relevant questions in itself justified the denial of such relief. *Kimm* v. *Rosenberg*, 363 U.S. 405. *De Lucia* v. *Immigration and Naturalization Service*, 370 F.2d (C.A. 7), certiorari denied, 386 U.S. 912; *Chen* v. *Foley*, 385 F.2d 929 (C.A. 6), certiorari denied, 394 U.S. 838; *Diric* v. *Immigration and Naturalization Service*, 400 F.2d 658 (C.A. 9), certiorari denied, 394 U.S. 1015. See, also *Gardner* v. *Broderick*, 392 U.S. 273; *Sanitation Men* v. *Sanitation Comm'r.*, 392 U.S. 280.

But, in any case, the great majority of the questions petitioner refused to answer were clearly not suggested by anything surreptitiously overheard.*

* While questions 2, 6 and 7 might be thought to have been suggested by information obtained through monitoring activities, we have no information that this was in fact the case, and merely assume it for the sake of argument.

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Questions 3–5, concerning petitioner's relationship with the S.G.S. Company, flowed from and plainly were suggested by his testimony at the hearings. Questions 8–10, regarding the Apalachin conference, follow from the public knowledge of his participation there. And question 11, concerning his tax returns, was suggested and made appropriate by his conviction in 1941 for a tax offense.

The refusal to grant relief was based upon petitioner's refusal to answer *any* of these questions. Given petitioner's stated reason for this refusal, and the substantially indiscriminate character of it, the possibility that one or more questions might be tainted is entirely irrelevant to the refusal to grant relief. There can, in other words, be no causal nexus between the surveillance activities and the hearing officer's determination to deny relief. At very least, it is suggested, any conceivable taint was so "attenuated" as to have "dissipate[d]" altogether. Cf. *Nardone* v. *United States,* 308 U.S. 338, 341; *Wong Sun* v. *United States,* 371 U.S. 471, 491; *Alderman* v. *United States,* 394 U.S. 165, 180–181.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1970.

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APPENDIX

Sections 212(a) and 241 (a) and (f) of the Immigration and Nationality Act, 66 Stat. 182–183, 204, as amended by the Act of September 26, 1961, § 16, 75 Stat. 655 (8 U.S.C. 1182(a) and 1251 (a) and (f)), provide in pertinent part:

SEC. 212 [8 U.S.C. 1182]. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * *

(18) Aliens who are stowaways;

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;

* * * * *

SEC. 241 [8 U.S.C. 1251]. (a) Any alien in the United States * * * shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

* * * * *

(f) The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

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